

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CRYSTAL HOWERY,

Plaintiff – Appellant,

v.

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS,

Defendant – Appellee.

No. 15-35803

**OPPOSITION TO APPLICATION TO
APPEAL IN FORMA PAUPERIS**

OPPOSITION

International Association of Machinists & Aerospace Workers (“Union”) files this opposition to Crystal Howery’s application to appeal in forma pauperis.

STATEMENT OF RELEVANT FACTS

On October 19, 2015, Crystal Howery filed a Notice of Appeal to the Ninth Circuit from the District Court’s dismissal of her claims against the Union (Dkt. # 65,67). Howery did not pay the docketing fee for the appeal (Dkt. 69). Thereafter, the Ninth Circuit issued an order requiring Howery to either pay the fee or file a motion to proceed in forma pauperis. (Id.) The Ninth Circuit attached Form 4, a seven-page “Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis” to its order. (Id.)

Howery subsequently filed a two-page form entitled “Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form).”¹ Howery did not use Form 4 provided by the Ninth Circuit. The Short Form filed by Howery differs from Form 4 in several significant ways.

- Form 4 is seven pages and asks for information in twelve categories. The Short Form is two pages and includes only eight questions.
- Form 4 requires an applicant to identify her “issues on appeal.” The Short Form does not ask an applicant to provide this information.
- Form 4 requires an applicant to provide detailed information about spousal employment, income, interest, retirement, disability, unemployment payments, etc. The Short Form does not require disclosure of this information.
- Form 4 requires an applicant to disclose employment history for the past two years. The Short Form does not require disclosure of this information.
- Form 4 requires disclosure of applicant and spousal bank accounts. The Short Form only requires the applicant to disclose the amount of cash she has in an account.
- Form 4 requires disclosure of assets owned by the applicant and spouse. The Short Form only requires the applicant to disclose things of value that she owns.
- Form 4 asks the applicant to identify any money owed to her or her spouse by third parties. The Short Form does not ask for the disclosure of this information.
- Form 4 asks for detailed estimate of average monthly expenses. The Short Form does not require the same level of details.

Further, Form 4 asks questions about anticipated changes to income or expenses, how much money has been spent on attorney fees, and provides space for additional information. The Short Form does not ask these questions or provide space for additional information.

¹ Howery filed one longer application to proceed in forma pauperis in Howery v. Boeing, No. 14-35959 (N.D. Cal.). Excluding the current application, she has filed eight other Short Form applications to proceed in forma pauperis in the federal courts: No. 15-35574 (W.D. Wash.), ECF No. 3; No. 15-35628 (W.D. Wash.), ECF No. 2; No. 15-35746 (W.D. Wash.), ECF No. 6; No. 15-35749 (W.D. Wash.), ECF No. 4; No. 15-35776 (W.D. Wash.), ECF No. 3; No. 15-35784 (W.D. Wash.), ECF No. 3; No. 15-35806 (W.D. Wash.), ECF No. 2; No. 15-35807 (W.D. Wash.), ECF No. 2. Some of these – those filed concurrently to this application – are outstanding. None have been granted.

ARGUMENT

HOWERY'S APPLICATION FOR IN FORMA PAUPERIS STATUS DOES NOT MEET THE REQUIREMENTS OF FRAP 24(a). HER APPLICATION IS PROPERLY DENIED.

Federal Rules of Appellate Procedure 24(a)(1) allows a party to file a motion in district court to appeal in forma pauperis. In connection with this motion, the rule requires:

The party must attach an affidavit that:

- (A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;
- (B) claims an entitlement to redress; and
- (C) states the issues that the party intends to present on appeal.

FRAP 24(a)(1). An application for in forma pauperis status that does not provide the required information is properly denied. See Williams v. Pierce County Bd. of Com'rs, 267 F.2d 866, 867 (9th Cir. 1959).

A. Howery Did Not Provide An Affidavit Showing Information In The Detail Prescribed By Form 4.

FRAP 24(a)(1)(A) requires an applicant to provide an affidavit showing information "in the detail prescribed by Form 4." Form 4 requires, among other things, an accounting of spousal income, spousal assets, and spousal employment history, as well as applicant's employment history, money owed to applicant by third parties, detailed estimates of average monthly expenses, and money spent on attorney's fees. Howery's Short Form does not show "the detail prescribed by Form 4."

Howery's Short Form application lacked information prescribed by Form 4, such as spousal employment, income, interest, retirement, disability, and unemployment payments.² The Short Form also lacks information about Howery's employment history for the past two years. In her application, Howery merely indicated she was unemployed. Form 4 requires disclosure of applicant and spousal bank accounts, but in the Short Form she only disclosed the amount of cash she has in an account. Howery did not disclose her assets or her spouse's assets, but merely listed one thing of value that she owns. She did not identify any money owed to her or her spouse by third parties. Finally, Howery did not provide the detailed estimates of average monthly expenses as prescribed by Form 4. Without this information, the Court cannot determine the truth of Howery's claim that she cannot afford court fees and costs under FRAP 24. Howery's application is properly denied.

B. Howery Failed To Identify The Issues She Intends To Present On Appeal.

FRAP 24(a)(1)(C) requires a party seeking in forma pauperis status to state "the issues that the party intends to present on appeal." Howery's Short Form application did not provide this information. Disclosure of this information is particularly important here as Howery has not provided any information about the basis for her appeal.

Howery appeals from the District Court's order granting the Union's motion for summary judgment and the Union's motion to dismiss for failure to prosecute. Howery did not oppose the motion for summary judgment. Nor did Howery respond to the motion to dismiss for failure to prosecute on the merits. Rather she merely filed a two sentence opposition claiming she was

² In November 2014, Howery submitted a "long form" application to proceed in forma pauperis in a separate lawsuit against Boeing. Howery v. Boeing, No. 14-35959 (N.D. Cal.), ECF No. 2. In that form, Howery listed a spouse by the name of Alan Hodge and stated he works at Boeing. However, Howery did not disclose her spouse's income. In the present application, Howery does not disclose this spouse and does not list this spouse's income or expenses.

1 going to file a motion for default judgment. Given this history, it is hard to imagine any valid
2 argument that Howery could raise on appeal. As Howery has failed to identify the issues she
3 intends to present on appeal, her application is properly denied.

4 **CONCLUSION**

5 Howery's application for in forma pauperis status is incomplete and should be denied.

6 DATED this 30th day of October, 2015.

7
8 s/Kristina Detwiler

9 Kristina Detwiler, WSBA No. 26448

10 Robblee, Detwiler & Black, P.L.L.P.

2101 Fourth Avenue, Suite 1000

Seattle, Washington 98121

Telephone: 206-467-6700

Facsimile: 206-467-7589

Email: kdetwiler@unionattorneysnw.com

13 Attorneys for Defendant – Appellee Union

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2015, I electronically filed the foregoing **OPPOSITION TO APPLICATION TO APPEAL IN FORMA PAUPERIS** with the United State Court of Appeals for the Ninth Circuit using the CM/ECF system, which will send notice of such filing to the following:

Crystal Howery
584 Castro Street
San Francisco, CA 94114
Email: acluplaintiff@hotmail.com

s/Kristina Detwiler
Kristina Detwiler, WSBA No. 26448
Robblee, Detwiler & Black, P.L.L.P.
2101 Fourth Avenue, Suite 1000
Seattle, Washington 98121
Telephone: 206-467-6700
Facsimile: 206-467-7589
Email: kdetwiler@unionattorneysnw.com

Attorneys for Defendant – Appellee Union